

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13

STERK'S SUPER FOODS, INC.

Employer

and

UNITED FOOD AND COMMERCIAL WORKERS  
INTERNATIONAL UNION, LOCAL 546

Petitioner

Case 13-RC-20468

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>1</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>2</sup>

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:<sup>3</sup>

All part-time and full-time meat cutters, meat wrappers, trainees, seafood and smokeshop employees, employed by the Employer at the Employer's facilities located at: 2121 East Columbus and 4725 Indianapolis Boulevard, East Chicago, IN, 6529 Columbia Avenue and 31 Sibley Boulevard, Hammond, IN, 1830- 45th Ave, Munster, IN, 225 Gold Coast Lane, Calumet City, IL, 1 Sauk Plaza, Sauk Village, IL and 500 Summit Plaza, Lockport, IL; but excluding service clerks, meat managers, maintenance employees, clerical employees, professional employees, guards and supervisors as defined in the Act.

**DIRECTION OF ELECTION\***

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which

commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the **United Food and Commercial Workers International Union, Local 546**

#### LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before **November 29, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

#### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **December 6, 2000**.

**DATED** on November 22, 2000 at Chicago, Illinois.

/s/ Elizabeth Kinney  
Regional Director, Region 13

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\*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

- 1/ The names of the parties appear as amended at the hearing.
- 2/ The arguments advanced by the parties at the hearing have been carefully considered.
- 3/ The Employer is a corporation engaged in the retail sale of groceries and related products.
- 4/ The Petitioner seeks to represent a unit consisting of all full time and regular part-time meat managers, meat cutters, wrappers, smokeshop employees, and seafood employees in the meat/seafood/smokeshop departments, including the meat managers, at eight Sterk's Super Foods Stores; but excluding all other employees, clean up people, office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Employer contends that the only appropriate unit is a wall to wall unit, including all full time and regular part time store employees employed at the eight Sterk's Super Foods Stores. The Employer takes the position that the meat managers are statutory supervisors within the meaning of Section 2(11) of the Act and, therefore, should not be included in any unit found appropriate.

The Employer operates eight retail grocery stores, three in Illinois and five in Indiana, under the name of Sterk's Super Foods. Each individual store has a meat department. The Columbia Avenue store also has a seafood department and a smokeshop. There are about 708 employees in total. The stores are open from 6:00 am to midnight, 7 days a week except on holidays, when the hours may vary. It is unclear what percentage of the stores' employees work part-time. According to the Employer's meat merchandiser, Larry Szymczak, the majority of the stores' employees work on a part-time basis and the majority of the meat department employees work on a full-time basis. Meat department employees usually leave by 5:00 p.m. For the most part, the only person remaining in the meat department after 5:00 p.m. is the service clerk. The service clerk cleans up the equipment in the meat department. Service clerks are part time employees and usually begin working after the other meat department employees have left for the day. Some stores do not have a service clerk. In those stores clean up is done by the meat department employees.

With the exception of the Columbia store, each meat manager supervises between three to six employees and there is at least one meat cutter and one wrapper. Five stores have service clerks. The Columbia store manager supervises eleven employees, there are three meat cutters, three wrappers, three seafood clerks, one apprentice and one smokeshop manager. There are no service clerks at the Columbia store.

The petitioned-for unit consists of forty-three employees, eighteen meat cutters, eight meat managers, eleven wrappers, two trainees, three seafood employees, and one smokeshop employee. Fifteen of the employees work on a part-time basis. The record is unclear as to the percentage of employees that had prior meat cutting or meat handling experience prior to working for the Employer's meat department. However, according to meat manager Frederick Frank, meat managers will look to whether a person submitting an application has had prior experience and, if so, will pass along the application to the meat merchandiser with a recommendation to further evaluate the job seeker. The ultimate hiring decision rests with the meat merchandiser. On occasion, a meat manager has recommended that a particular applicant be hired; and the meat merchandiser has always followed that recommendation. The record is unclear as to whether meat managers have the authority to discipline employees without first consulting with the store manager or the meat merchandiser. Meat manager Frederick Frank, testified that on one occasion, he along with the store manager, sent home an employee who had been caught price changing. After checking with the merchandiser, and following store policy, the employee was terminated. Meat managers verbally evaluate employees' performances and pass along their observations to the meat merchandiser.

The meat department does not handle meat carcasses. The department sells beef, pork, lamb and veal, which arrive as boxed meat. Boxed meat is received in cardboard boxes, ranging in weight between fifty to one hundred and ten pounds. According to meat merchandiser, Larry Szymczak, fifty to sixty percent of the product handled by the meat department is case-ready product, which, but for pricing and labeling, needs no further processing. The meat merchandiser testified that, on a yearly basis, on average, sixty percent of the ground beef sold by the Employer comes pre-ground in ten pound tubes contained in seventy or eighty pound cases. The meat cutters operate the grinding machine and may spend more than an hour and a half a day grinding meat.

The meat cutters help unload the meat department deliveries. The boxes contain primal or subprimal cuts. After the meat is unloaded the meat cutters use knives and a bandsaw to get the meat ready for sale to the store's customers. Meat cutters cut bones using a band saw, trim the meat, rework and reface meat using knives. The meat manager at the Sibley store testified that a meat cutter can cut down a beef round for round steaks or process it out and get top round, or bottom round steaks. Besides cutting the meat, meat cutters scrape the meat in order to remove bone dust and fat after the meat is run through the saw. The meat cutters must also cut the meat to fit the trays prior to being placed in the wrapping machine. Meat manager, Frederick Frank, testified that the goal was to make the meat presentable to the customer. Therefore, the meat cutter needs to know which angle to cut the meat to avoid waste. According to the meat merchandiser, the duties of the meat cutter take skill in order "to cut and process product to the best of their ability as far as gross profit and getting the best yield out of the product" by not wasting any meat. The majority of the poultry received is "case-ready" which means that the meat department employees may only have to label it, price it and place it in the display case. The meat manager at the Sibley store stated that everything that came in underwent some sort of processing whether it be pricing or cutting.

According to the testimony of the meat manager Frederick Frank, it takes approximately 30 days to train a meat wrapper. Meat wrappers operate an automated wrapping machine in which the operator places the meat, punches in the code number and the machine wraps and prices the item. Although the operation of the machine is not difficult, the meat wrapper must be able to visually recognize the particular cut of meat being processed.

Meat department employees are not loaned out to other departments in the store. Although a few meat department employees have transferred in from other departments in the store, they fill out new job applications and start at the lowest rung of the ladder in the meat department. Meat manager Frederick Frank testified that in his store there is a meat cutter apprentice named Robert Jeeninga. According to Frank, Jeeninga transferred from the grocery department to the meat department. Frank testified that Jeeninga filled out a meat department application in order to transfer and will be undergoing the industry standard of three years as a trainee prior to becoming a meat cutter. Meat cutter Ricardo Jasso testified that he transferred to the meat department from the grocery department and was an apprentice prior to becoming a meat cutter. The record is silent as to how long he was an apprentice. There is little interaction between the meat department employees and the other store employees. Meat department employees may work alongside other store employees when they are servicing display cases which they may share with other departments, such as deli and when they are unloading deliveries.

Several witnesses testified that they have never seen non-meat department employees in the cutting room or operating meat department equipment. Occasionally, a store employee or supervisor, upon a customer's request may enter the meat department and pull an item for the customer. Testimony showed that the employee or supervisor pulls the item from a meat tray in a highboy located in the cooler. Furthermore, witnesses testified that store supervisors are not trained to operate the wrapping machine in the meat department. The record showed that store employees do not operate meat department equipment. Meat manager David Rocha testified that store employees have customer contact about fifty to one hundred percent of the time, while meat department employees have contact with customers less than fifteen percent of the time.

The Columbia Avenue store has a seafood department which employs one full time and two part time employees. There was little testimony regarding the operation of the seafood department. Meat merchandiser Larry Szymczak testified that the products sold in the seafood department are case ready for that particular department and would be displayed raw. Additionally, Szymczak testified that the Columbia store also has a smokeshop which employs one full time employee called a smokehouse manager. The smokeshop manager is under the supervision of the meat manager. The smokehouse processes fresh pork into a variety of fresh and smoked sausages. The smokehouse is not located within the meat department. It is located near the bakery and deli departments. There is a meat cutter trainee in the Columbia store and another in the Sibley store.

#### Supervisory Status – Meat Managers

The store managers are in charge of their individual stores. They report directly to the operations manager. The Meat Department Merchandiser reports to the operations manager. The meat merchandiser supervises the operation of the meat departments, is involved in developing the budget for each meat department, directly supervises the meat department managers and has the ultimate word in hiring decisions. The meat managers report to the store manager and to the meat department merchandiser. Meat managers are responsible for the over all supervision of the meat department. The meat managers direct meat department employees in their everyday work by deciding who will unload meat deliveries and place them in the cooler, who will stock the cases and counters, who will grind meat, and who will do the cutting and trimming of boxed meats, as well as deciding what items will be cut that day by generating a cut list after he inspects the cases in the morning. The meat manager can approve requests for time off without first obtaining permission from the store manager or the meat merchandiser. Meat cutter Ricardo Jasso, testified that he viewed the meat manager as his supervisor because he told him what to do. The record shows that the meat department managers informally review job applications turned into the meat department, and can recommend applicants; however, the final hiring decision rests with Larry Szymczak, the meat merchandiser. The record does not establish how much weight the meat merchandiser gives to the recommendations given by the meat managers in making hiring decisions. The meat manager also notifies the meat merchandiser when an employee in the meat department is approaching six months from the employee's last raise. According to meat merchandiser Larry Szymczak, the meat cutters and the meat wrappers are on a wage progression scale in which the meat wrappers receive a raise every six months and top off at about \$10 per hour and the meat cutters receive a raise every year until they reach \$16 per hour. Service clerks are paid the lowest wage in the meat department, between \$5.50 to \$6 per hour. Meat department trainees are paid between \$8 to \$12.50 per hour, seafood clerks are paid between \$5.50 to \$8.50 per hour and the smokeshop manager is paid \$14.50 per hour.

Kevin Cooper, the Employer's vice president testified that the meat managers are salaried employees. However, payroll records for stores #1174, #674, and # 134 show that the meat department managers in those stores are not designated as salaried employees, and receive an hourly rate of \$16.50 an hour. Meat managers, as well as meat department employees, with the exception of service clerks, do not punch a time clock but are required to fill out time cards and turn them in at the end of each week. The meat managers collect the time cards from the meat department employees and turn them in, along with their own, to the store manager. The meat managers can also qualify to receive quarterly and yearly bonuses, while the other meat department employees do not qualify to receive such bonuses.

The meat managers are invited to attend the annual management Christmas party, while the meat department employees, as well as other employees in the unit proposed by the Employer are not invited. The meat managers are responsible for the overall condition of the meat department, including profitability, and are given a yearly budget within which to operate the meat department. Meat manager Frederick Frank testified that he wears a name tag which reads, "manager." Meat managers are authorized to deal directly with meat suppliers and can place orders without having to get prior approval from anyone. The meat manager has the authority to set the price and lower the price on meat department items. Vacations for employees in the meat department are granted based on a company-wide seniority list. The meat managers, however, are given first choice to pick their vacation, regardless of their place in the seniority list. Once the meat managers have picked their vacation time, the employees in the meat department can then schedule their vacations.

### **Appropriate Unit**

In order to determine the appropriateness of a separate meat department unit that does not handle carcass meat, the Board will look to see whether a significant amount of the meat department work involves the handling of boxed meat rather than case-ready products. If it is found that a significant amount of work involves the handling of boxed meat, the actual work performed by the meat cutters will be considered in order to determine to what extent the meat cutters continue to exercise substantial,

traditional meat cutting skills. *Scolari's Warehouse Markets, Inc.*, 319 NLRB 153 (1995).

In *Scolari's* the Board did not define the range of specialized meat cutting skills necessary nor the weight such skills should be given vis-à-vis other community of interest factors in determining the appropriateness of a separate meat department unit. However, it is clear from *Scolari's* that the meat department employees need not exercise the full range of meat-cutting craft skills to constitute an appropriate separate unit. They must, however, at least, perform separate and distinct skills and functions from other employees, and the appropriateness of a separate meat department unit depends rests upon balancing the degree of the distinct functions and skills of the meat department employees with the other community of interest factors traditionally considered by the Board to determine if, on balance, the meat department's community of interest lies within the department or with other employees in the store.

Applying the foregoing principles to the facts of this case, I conclude that the meat department employees have a distinct community of interests apart from other employees at Sterk's Super Foods. Approximately forty to fifty percent of the meat sales at Sterk's Foods come from non-case ready products which must be processed and handled by the meat department employees. In *Super K-Mart*, 323 NLRB 582 (1997), forty percent of the employer's meat department sales came from boxed meat that needed to be further processed. In that case the Board held that forty percent was a substantial amount of the Employer's business that justified consideration of whether the meat cutters used distinct skills to process that meat. Following the same standard, I find that the forty to fifty percent of the employer's meat sales that comes from boxed meat which needs to be further processed constitutes a "substantial portion of the Employer's meat department business...." *Scolari's*, 319 NLRB at 158.

Second, I find that the meat cutters at Sterk's Super Foods continue to utilize and apply specialized meat cutting skills to transform the product received into a saleable product with a minimum of waste. Several meat managers testified that the most valuable skill of a meat cutter was to cut the product with a minimum of waste. The meat cutters continue to angle, face, trim and dust off meat utilizing the skills gained over the years in order to make a profit for the Employer. The meat cutters utilize skills similar to those in *Scolari's* on a consistent basis. Furthermore, the Employer's contentions regarding how little skill is needed to perform the job of the meat cutters is undercut by its own practice of looking for experienced meat cutters and paying them the highest wages in the store.

I also find that over sixty-five percent, a substantial portion of the unit, engages in traditional, specialized meat-cutting skills. See *Scolari's*, 319 NLRB at 158. Moreover, the record shows that the meat wrappers, the seafood clerks and the smokeshop manager are a fully integrated part of the meat department and share a community of interests with the meat cutters. They work hands-on with raw products. They are permanently assigned to the meat department, they do not rotate to other parts of the store and, with the exception of the seafood clerk, are paid slightly higher wages than employees outside of the meat department. The meat wrappers complete the necessary steps to make the product available to the customers. Like meat cutters, meat wrappers, seafood clerks and the smokeshop manager do not punch in and out and are supervised by the meat managers.

The Employer also contends that service clerks should be included in any unit found appropriate. The record amply shows that the service clerks do not share a sufficient community of interests with the meat department employees to mandate their inclusion. Service clerks punch in and out, start working after the meat department has closed, do not handle raw products and are paid roughly the same wages as other store employees. They have little interaction or interchange with the employees in the petitioned for unit, and do not possess the same skills. The only tie to the meat department is that they clean their machines and are supervised by the meat managers whom I have found to be supervisors within the meaning of the Act. Accordingly, I will exclude the service clerks from the unit found appropriate herein.

The record shows that meat department employees may work side by side with other store employees while downloading meat department deliveries and stocking cases shared with other departments. While I find that there is a limited amount of interchange between the meat department

employees and store employees, I find that this limited amount of interchange is of the daily type that occur in every situation where numerous employees work under one roof, and do not find it sufficient to negate the separate community of interests of the meat department employees as found herein.

The Employer contends that the facts herein are similar to those in *Great Day, Inc.*, 248 NLRB 527 (1980), *Yahoan of California, Inc.* 252 NLRB 309 (1980), and *Hall's Super Duper*, 281 NLRB 1116 (1986), in which wall to wall units were found appropriate. However, such arguments are unavailing. In *Scolari's*, the Board specifically overruled *Hall's* and other cases that were inconsistent with the standards it announced. *Scolari's*, 319 NLRB at 158, n.9.

In sum, I find the meat cutters exercise a substantial amount of traditional meat cutting skills; the skilled meat cutters constitute a substantial portion of the proposed unit; the meat department has separate supervision from other employees of the Employer; there is minimal interchange between employees in the meat department and other store employees; the meat department employees receive higher wages than employees in other departments and they work in a physically separate area from other employees. Accordingly, I find that the meat department employees covering the meat cutters, meat wrappers, trainees, seafood and smokeshop employees with the exclusion of meat managers and service clerks have a community of interests separate from those of the other store employees, and I shall direct an election in the unit I have found appropriate.

### **Analysis**

#### **Supervisory Status - Meat Managers**

The petitioner contends that meat department managers are not supervisors and should be included in the bargaining unit. The Employer argues that meat department managers are supervisors and should be excluded. Section 2(11) of the National Labor Relations Act sets forth the test to determine supervisory status. It provides:

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees, or to recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature, but requires the use of independent judgment.

It is well settled that in order to support a finding of supervisory status, it must be shown that the individual has the power to act on behalf of the employer with respect to other employees and exercises independent judgment in so doing. *International Center for Integrative Studies / The Door*, 297 NLRB 601 (1990). While supervisory status may be found where an individual exercises discretion with regard to any of the elements outlined in Section 2(11) of the Act, the exercise of some supervisory authority "in a merely routine, clerical, perfunctory or sporadic manner does not confer supervisory status on an employee." *Bowne of Houston, Inc.*, 280 NLRB 1222,1223, 1986; accord, *Clark Machine Corp.*, 308 NLRB 555 (1992). In determining supervisory status, the Board has also considered secondary indicia, the possession of which weigh in favor of such supervisory status; factors, such as, whether the individual is considered by others to be a supervisor and whether he has the authority to grant time off. *Laser Tool, Inc.*, 320 NLRB 105, (1995). The burden of proving that an individual is a statutory supervisor rests on the party alleging such status. *Ohio Masonic Home, Inc.*, 295 NLRB 390 (1989).

Applying this principles to the instant case, I find that the Employer has demonstrated that the meat managers are supervisors as defined in Section 2(11) of the Act. The Petitioner contends that meat managers do not exercise independent judgment in connection to statutory supervisory duties. It is clear from the record that meat department managers do exercise independent judgment in effectively recommending the hire of meat department employees, in scheduling employees and assigning them their duties and in granting them overtime.

Meat managers assign work to meat cutters every day. The meat manager inspects the meat case display and based on what he finds uses his judgment to create a cut list. Meat cutters work off that cut list. Additionally, meat managers determine what product in the display cases needs to be reworked or refaced, thus effectively creating more work for the meat cutters. The meat managers decide when employees will be needed to stay past their regular hours and grant overtime. Meat managers evaluate job applications and pass along applications with their assessment and recommendation to the meat merchandiser. Larry Szymczak testified that the ultimate hiring decision rests with him but admitted that he takes the recommendations of his meat managers into consideration and goes along with them. Significantly, the record does not reveal any instance where Szymczak did not follow the meat manager's recommendation that a particular applicant be hired. Therefore, I find that the meat managers effectively recommend the hiring of employees.

As evidenced by the testimony of Ricardo Jasso, meat managers are considered supervisors by the meat cutters they oversee. Meat managers wear name tags identifying them as managers to the public. They have the authority to change prices on items at their discretion thus directly affecting the profitability of the meat department. Meat managers receive higher wages, have priority over vacations and unlike non-supervisory employees, meat managers are invited to the management Christmas party. Although not controlling, these facts are secondary indicia which support the conclusion that the meat managers are, in fact, supervisors.

There are approximately 35 employees in the unit found appropriate.

177-8520-0100; 177-8520-2400;  
440-1760-9167-4833; 401-7550